

**PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING/GENERAL MEETING  
OCTOBER 28, 2008**

Place: Room 206  
Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:  
Conze, Spain, Grimes, Finke

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

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Mr. Conze read the first agenda item:

**GENERAL MEETING**

*Discussion, deliberation, and possible decision regarding:*

**Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #261, Land Filling & Regrading Application #208, Christopher & Margaret Stefanoni, 77 Leroy Avenue.** Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. *HEARING CLOSED ON 9/4/2008. DECISION DEADLINE: 11/8/2008, UNLESS EXTENSION GRANTED BY APPLICANT.*

Commission members discussed the draft Resolution that had been prepared by the staff and distributed prior to the meeting. Mr. Ginsberg explained that comments had been received from various Commission members and incorporated into a revised draft. He distributed copies of that revised draft for the Commission members to see the comments that had been made by other members. He reviewed comments that had been made by Mr. Spain in the late afternoon and incorporated into the draft. Commission members read through the revised draft.

The following motion was made: Rather than reading the entire draft Resolution aloud, the Chairman was to read main portions of the draft aloud and summarized the proposed action of the Commission. That motion was made by Mr. Spain, seconded by Mrs. Grimes and unanimously approved.

Chairman Conze then read portions aloud and summarized other portions of the draft Resolution. Following a brief discussion, the following motion was made: that the Commission adopt the following modified Resolution to deny without prejudice the applications to Amend the Zoning Map and Zoning Regulations, and to deny without prejudice the Affordable Housing application, Site Plan application # 261 and Land Filling and Regrading application # 208. The motion was made by Mr. Finke, seconded by Mrs. Grimes and unanimously approved. The Adopted Resolution reads as follows:

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**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
October 28, 2008**

Application Number: Proposed Amendments to the Zoning Map and Zoning Regulations,  
Affordable Housing Application, Site Plan Application #261,  
Land Filling & Regrading Application #208

Site Location Street Address: 77 Leroy Avenue  
Assessor's Map #39 as Lots #74-1 and #74-2

Name and Address of Property Owners: Christopher & Margaret Stefanoni  
And Applicant: 149 Nearwater Lane  
Darien, CT 06820

Activity Being Applied For: Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking, regrading, and to perform related site development activities.

Property Location: The subject property is located on the west side of Leroy Avenue at the southwest corner formed by the intersection of West Avenue and Leroy Avenue.

Zone: R-1/5 Zone

Date of Public Hearing:  
*July 8, 2008 continued to July 15, 2008, August 5, 2008 and September 4, 2008*  
Deliberations held on September 23 and October 7.

Time and Place of Public Hearings: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices  
Dates: June 26 and July 3, 2008 Newspaper: Darien News-Review

Date of Action: October 28, 2008

Actions:

**Affordable Housing Application, Site Plan Application #261, Land Filling & Regrading Application #208:** to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking, regrading, and to perform related site development activities.  
DENIED WITHOUT PREJUDICE

**Amendments to the Zoning Map and the Darien Zoning Regulations:**  
DENIED WITHOUT PREJUDICE

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Scheduled Date of Publication of Action:  
November 6, 2008

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

***I. Affordable Housing Application, Site Plan Application #261, Land Filling & Regrading Application #208:***

1. Proposed Building. The aforementioned applications seek approval for the construction of 16 units of age-restricted housing (at least 30% or in this case, five units of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking, regrading, and to perform related site development activities. The first floor of the proposed building will be primarily for parking, and both the second floor and the third floor will each contain eight housing units. All sixteen units are two-bedroom units, and they have an average size of 1,060 square feet. The proposed building will be served by public water and sewer.
2. The Site. The subject property consists of two currently vacant building lots. Together, these lots had been used for many years as a CL&P electrical substation. The two subject lots total about .4678+/- acres in size (Lot #74-1 is .2549 acres and Lot #74-2 is .2130 acres), and are now located in an R-1/5 Zone. The record indicates that water has ponded on this property in the past and prior to filing the application the applicant regraded a portion of the parcels with trap rock and fill. With the sixteen proposed units, the proposal has a density of 34.0 (thirty-four) units per acre. The current zoning district now allows a maximum of 5.0 (five) units per acre. The subject application is requesting a nearly seven-fold increase in density over what is currently allowed under the existing R 1/5 zoning regulations and substantially more than has been approved under other Darien multi-family zoning regulations.
3. Building Height. According to the submitted plans, the proposed multi-family building will be three stories in height. The ground floor will have 11,858 square feet; the second floor will have 12,000+/- square feet; and the third floor will have 11,716 square feet—a total of 35,575 gross square feet. The height of the building is three stories (no basement) as shown on the submitted building elevations. The height from the ground to the peak of the building is 45 feet, with a “calculated building height” according to the Town’s Zoning Regulations of 38 feet. In the R-1/5 zone the maximum building height is 30 feet and in other Darien multi-family housing zones the maximum height is 2/12 stores or 28 feet.

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4. Building Location Near Intersection. In July, the applicant's surveyor "staked" the corners of the building, allowing Commission members to visit the site and see first-hand the location of the proposed building, the proposed driveway, and the building's proposed location relative to existing streets and nearby residences.
5. Age Restricted Housing. The applicant has represented that the proposed condominium units will be "age restricted"--the applicant proposes strict age limits of who can live in these units, and children will not be allowed to live in the condominium complex. Representations concerning age restricted housing are contained in the applicant's May 16, 2008 application materials. The Commission notes that any deed restrictions regarding age would have to be filed in the Darien Land Records, and an independent management company would need to be responsible for strictly enforcing said deed restrictions.
6. The Plans. The last revisions of each of the submitted plans are entitled:
  - "Map of Property prepared for Leroy-West Senior Residences, #77 Leroy Avenue", by Hammons, LLC, scale 1"=20', dated May 5, 2008, Sheet 1 of 5.
  - "Proposed Site Plan prepared for Leroy-West Senior Residences, #77 Leroy Avenue", by Hammons, LLC, scale 1"=20', dated May 5, 2008 and last revised August 19, 2008, Sheet 2 of 5.
  - "Proposed Grading and Utility Plan Design of Storm Drainage System prepared for Leroy-West Senior Residences, #77 Leroy Avenue", by Hammons, LLC, scale 1"=20', dated May 5, 2008 and last revised July 12, 2008, Sheet 3 of 5.
  - "Soil Erosion & Sediment Control Plan prepared for Leroy-West Senior Residences, #77 Leroy Avenue", by Hammons, LLC, scale 1"=20', dated May 5, 2008, Sheet 4 of 5.
  - "Planting Plan prepared for Christopher Stefanoni and Margaret Stefanoni", by Stuart Sachs, originally dated April 21, 2008 and last revised 26 Aug 08. (Planting Plan was Sheet 5 of 5 in the originally submitted package, but has been superseded in this plan).
  - Leroy-West Senior Residences, 77 Leroy Avenue by Stein Troost Architecture dated 5.9.08.
7. P&Z Consultants. The Planning and Zoning Commission hired Joseph Canas, a professional engineer from Tighe & Bond to review the application from an engineering/drainage standpoint. The Commission also hired Michael Galante, traffic engineer and Executive Vice President of Frederick P. Clark, Associates, Inc., to perform a peer review of the submitted materials regarding parking, traffic and sight lines.
8. Overlay Zone. Part of the application includes a proposal to establish a new overlay district entitled, "Leroy-West Affordable Housing Overlay Zone" (see pages A6-A7 of the August 5 submittal package by the applicant including notes thereto "a" through "i"). The applicant proposes to have this new overlay zone apply to the combined parcel made up of the two subject lots. The subject properties are now zoned R-1/5. The existing zoning requirements from Section 406 of the Darien Zoning Regulations are listed below, as are the proposed new overlay zoning regulation amendment requirements and the proposed project details. The proposed overlay zone (as proposed by the applicant dated 8/5/08) would allow a three story building up to forty feet high within five feet of a front property line.

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	<u>R-1/5</u>	<u>Proposed Overlay Zone Requirements</u>	<u>Proposed 16-unit development</u>
1. Minimum Lot Area (Square Feet) (See notes e, g)	8,712	20,000	20,377
2. Minimum Width (See notes a, b, e)	60	100	145.32
3. Minimum Frontage (See notes a, e, h, i)	50	100	285.34
4. Minimum Depth (See notes a, e)	100	100	140
5. Minimum Front Yard (See notes a, b, c, d) <sup>1</sup>	25	5	5.6 to West Ave./6.4 to Leroy Ave.
6. Minimum Side Yard: Least One	8	8	9
7. Minimum Side Yard: Total of Two (See notes b, e)	20	N/A	N/A
8. Minimum Rear Yard (See note b)	25	8	12.5
9. Accessory Structures (See note f)	25	5	
9A. Minimum Distance from Front Lot Line			
9B. Minimum Distance from Side Lot Line	5	8	
9C. Minimum Distance from Rear Lot Line	5	8	
10. Maximum Height in Stories	2 1/2	3	3
11. Maximum Height in Feet	30	40	38
12. Maximum Building Coverage	20%	None	58.2%
13. Maximum Gross Floor Area of each Dwelling Unit (square feet)		1,600	
14. Minimum Floor Area of each dwelling unit (square feet)		500	

<sup>1</sup>to be measured from the property line regardless of the width of the right-of-way. Section 363, "Visibility at Intersections," and corresponding illustration in Section 221 of the Regulations shall not apply.

9. Building coverage. The subject property is located in an R-1/5 (residential) single family residential zone and the maximum building coverage permitted by the zone is 20% of the lot area. There would be no building coverage limit if the proposed overlay zone were adopted and placed onto the subject property. The building coverage maximum is not a floor area ratio (FAR), but is only a bird's eye view of the portion of the property covered by all structures. A building coverage requirement is needed to assure that there is sufficient room on the property for necessary ancillary uses such as on-site parking, maneuvering room for emergency and service vehicles, utilities and mechanical equipment, recycling and garbage bins, dumpsters, and yard areas. When re-zoning this or any site, the Commission must consider some type of similar limitation so that the ancillary uses can fit on the site in a safe and workable manner.

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Public Safety requires that some limitation on maximum building coverage needs to be considered when re-zoning this subject property via an overlay zone designation.

10. ARB. The Town Architectural Review Board (ARB) sent a memo to the Planning and Zoning Commission dated August 4, 2008 regarding this application. In that memo they note that the ARB met on July 15, 2008 and had the following comments: "...[b]ecause it is essentially built to the sidewalks on the corner site and has a 45' high ridge, the building has a looming quality which is not appropriate for the lower-scale buildings in the neighborhood"...the ARB could not approve the design...."
11. EPC. The Darien Environmental Protection Commission (EPC) sent a memo dated July 10, 2008. That memo had six basic concerns/comments. There were: significant concerns with the density of the site development (16 units on 0.47+/- acres) and the potential impacts on downstream flooding; the potential for adverse impacts on downstream storm water quality; the long term maintenance requirements of underground structures and hydrodynamic separators; the proposed "treatment train"; a long term maintenance plan should be required, along with the funding for the inspection and maintenance of these structures; and concern about the removal of a large number of mature trees on a property and efforts to establish landscaping trees which are as large as practical were recommended to help to mitigate this impact.
12. DRAINAGE/ENGINEERING. Mr. Canas reviewed the applicants' drainage report dated May 16, 2008 submitted by Mr. Barry Hammons of Hammons, LLC. Mr. Canas sent a July 1, 2008 four-page letter and a July 28, 2008 four-page letter reviewing the submitted plans and associated drainage report. Mr. Hammons responded to Mr. Canas' July 1, 2008 letter with a response memorandum dated July 15, 2008 with associated revised plans and calculations, as well as his July 28, 2008 letter in a letter dated July 31, 2008. Mr. Hammons also sent a memo dated August 28, 2008 to Mrs. Stefanoni (one of the co-applicants) noting that the modified site plan attenuates post-construction storm flows to be below the pre-construction flows except for the 2-year and 100-year storms (the 5-, 20-, 25- and 50-year storms are properly attenuated to below pre-construction levels).
13. TRAFFIC, PARKING, AND DRIVEWAY/CURB CUT. Mr. Galante wrote three separate letters to the Commission in response to the materials submitted, and also testified at the public hearings. His three letters are dated: July 2, 2008; July 28, 2008; and August 1, 2008. His August 1, 2008 letter focused generally on four subject areas: 1) Leroy Avenue/West Avenue Intersection Sight Distance Analysis/Clear Sight Triangle; 2) Site Access Drive Intersection Sight Distance Analysis; 3) site access drive; and 4) on-site parking.
14. The applicant submitted various reports on the subject of traffic from DLS Consulting. The first was a May 12, 2008 Traffic Study. A subsequent July 15, 2008 report by engineer David Spear of DLS reviewed traffic-related issues, and was a response to Mr. Galante's July 2<sup>nd</sup> letter.
15. SIGHT LINES. The two subject lots, when combined into the subject property, create a corner lot at the intersection of Leroy Avenue and West Avenue. The August 19, 2008 site plan shows the proposed three story/38 foot high building 5.8 feet from the West Avenue property line and 7.9 feet from the Leroy Avenue property line at its point closest to the intersection of the two streets. At certain places on the properties, it is even closer to the streets than that.

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16. Sight line at corner. Sections 221 and 363 of the Darien Zoning Regulations prohibit the construction of any fence, wall, building or other obstruction within close proximity to the intersection of streets. The requirement is that nothing exceeding a height of three (3) feet shall be in a triangle formed by the intersecting street lines and a straight line joining such street lines at points which are 30 feet distant from the point of intersection. Compliance with the 25-30 foot front yard setback requirements for a corner lot is essential to implementing Sections 221 and 363, which are zoning regulations intended to promote public safety. These regulations are intended to assure that drivers and pedestrians can see other vehicles and persons approaching the intersection. This regulation is applicable when there is a stop light or stop sign involved because it is necessary to see traffic on the other street before proceeding through the intersection. It is particularly important at this location where both streets are narrow single traffic lane streets which experience high volume traffic several times a day due to their close proximity to the rail underpass and the train station. Under the current application, the building and development would occur extremely close to the street intersection and therefore, the sight line safety problem would be created. The Commission is unable to modify the building design and development proposal in a way that would be able to address and satisfactorily alleviate this important safety concern, except to observe that its east and north exterior walls must be moved further back from the street lines so as to provide the required full view of intersecting traffic.
17. Leroy and West Avenue Intersection. The sight line at the intersection of Leroy Avenue and West Avenue is of special concern relative to public safety. The Commission heard testimony from David Spear of DLS Consulting, Michael Galante of Frederick P. Clark, Associates Inc., and David Keating, Darien Zoning Enforcement Officer regarding the adequacy of the sight lines. Mr. Keating submitted a five-page written statement dated September 4, 2008 and a memorandum dated July 24, 2008 with associated pages from the Darien Zoning Regulations and a sketch.
18. Proposal to Waive Section 363 is a Request to Waive Public Safety. Section 363 requires that corner lots have visibility at intersections. This public safety regulation has long applied to all intersections in residential zones. The applicant suggests that Section 363 of the Darien Zoning Regulations should not apply to this development. The applicant proposes that the zoning regulations waive visibility requirements at this one intersection in Darien. The Commission finds that the applicant has failed to justify waiving this regulation which would compromise public safety for all vehicular and pedestrian traffic at the very busy West and Leroy Avenue intersection.
19. **While the Commission might normally consider simply “moving” the proposed building further away from the intersection to achieve proper sight lines and avoid a public safety hazard, this is not possible in this specific application.** This is because the building as shown on the August 19 Proposed Site Plan is only 9.0 feet from the western (side) property line, and only 12.5 feet from the southern (rear) property line. Thus, there is nowhere for the Commission to “move” the building without creating an issue on another side of the building. The only option available would be to modify the building, possibly by removing a portion of the building and parking closest to the West Avenue/Leroy Avenue intersection, which has an impact upon the sight lines.

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20. Driveway Curb Cut. One curb cut is proposed to serve this development. It would be located on Leroy Avenue. It would be 24 feet wide, plus the curved radius of each edge of the driveway as it intersects with the street and would be about 28 feet north of the adjoining residence located at #73 Leroy Avenue. Coming off of that asphalt drive would be an area of decorative pavers, which would be used for a loading area.
21. At the September 4, 2008 public hearing, Mr. Galante said one of the concerns is the sight lines at the driveway. He said that those sight lines are not shown on the plan, and they need to be drawn out and measured. Any sight line distance should be measured from a distance 15 feet back from the curb line so that a car or other vehicle exiting the site will not need to obstruct the pedestrian sidewalk while the motorist is looking for traffic. He said that the trees do obstruct the sight line and limit it to a 185 foot distance, not the 400 foot distance that the applicants represent. At that hearing, he said that it appears that trees on the neighbors site would need to be removed in order to create a greater sight line distance. Applicant claimed that the tree(s) are on the subject site and could be removed if required. No proof or written verification was offered. Both Mr. Keating and Mr. Galante submitted diagrams for the record showing sight lines, and the impact of the proposed building on sight lines near the intersection as well as near the driveway.
22. Mike Galante, Traffic Consultant to the Commission and to the Town, reviewed the August 5, 2008 response from the applicants' traffic consultant. He said that, given how much of the lot is taken up by the building, the applicants' consultant has done his best in trying to make space for the deliveries and for the turn around area, but that does not mean that it will work well. He said that getting one delivery truck onto the site will work, but a second delivery vehicle will cause congestion. He noted that as the driveway spreads out and gets wider along the street edge, it gets less safe for pedestrians.
23. Proposed Parking. The submitted site plan shows a three story building with on-grade parking consisting of 24 parking spaces. Of those 24 parking spaces, 22 were originally proposed for inside the garage, and two were shown outside the building along with a turnaround marked as "no park area". The garage would take up virtually the entire ground floor of the proposed building. This was shown on the Site Plan last revised July 12, 2008. Through the public hearing process, the applicant modified the plans, and the August 19, 2008 revision of the Site Plan shows 24 parking spaces inside the garage, and an area of decorative pavers (with a proposed sign "No parking/Loading area only") measuring 24' x 40' outside the garage.
24. Insufficient On Site Parking. Darien's existing Zoning Regulations require a minimum of 2.5 parking spaces per unit. Darien Housing Authority affordable elderly housing parking may be reduced to 1.5 parking spaces per unit (Section 514.2f of the Zoning Regulations) because these units are either studio or one bedroom units and are much smaller units with fewer occupants. According to the applicant, each unit will be provided with only one parking space, leaving eight parking spaces to be available for visitors. All of these parking spaces would be located within the garage. The Commission finds that 24 parking spaces for 16 two bedroom units provides insufficient parking for residents and visitors at this proposed building site.
25. No On-Street Parking. There was discussion during the public hearing on whether the proposed 24 parking spaces would be adequate for the proposed sixteen units, which would be a mix of



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market-rate and affordable units. The Commission notes that on certain occasions, parking would be fully occupied, and visitors would possibly need to park off-site. It is noted that there is now no parking allowed along Leroy Avenue or West Avenue in the vicinity of the site. Although there is now a privately-owned commuter parking lot across the street, there is no guarantee that this lot will exist and be available for public parking in the future.

26. **Service Vehicles.** Significant discussion occurred during the public hearing process regarding the proper amount of parking needed to accommodate the sixteen proposed units. Other related concerns were regarding the trucks and other vehicles needed to load and unload goods and services, including moving vans, FedEx, UPS, and other frequent delivery vehicles, and the local senior transportation service—Gallivant. There is no parking allowed on West Avenue or Leroy Avenue in the vicinity of the subject properties. Both are highly trafficked single traffic lane streets that have no space or right-of-way for expansion or widening. Any parking that does occur along the street would create a traffic and safety hazard because other motorists would have to drive in opposing lanes to get around the parked vehicle and pedestrians would either have to go into the street or onto private property.
27. **Emergency Vehicles.** The Commission notes that the intensity of 16 units is likely to result in a disproportionally high number of emergency calls due to the concentration of elderly residents. Emergency calls involve police, ambulance and supervisors from the Post 53 public ambulance service. There is no place on the site left for overflow parking, or for any traffic to move on or off the site during such an emergency event. It is noted that if there were fewer residents in the building, there would be a lower probability of a traffic or parking problem.
28. **Railroad Overpass.** It is specifically noted that about 200 feet farther down Leroy Avenue, south of the site, is a railroad overpass. Leroy Avenue runs under the train tracks, and has a very narrow paved road width and a restriction on height of trucks going underneath it. This railroad overpass (also known as a “train bridge”) is shown on page A8 of the Applicant’s application package of May 16, 2008. This railroad overpass is very narrow and raises vehicular and pedestrian safety issues. It was also noted that this underpass floods.
29. **Confluence of Events.** Commission members believe that a traffic and circulation problem will certainly occur when there are inevitable occasions when the confluence of events results in several deliveries and caretakers and other service people coming to the property at once. These occasions will create a higher risk of traffic and parking problems that are much more likely at this site if it is more densely developed than other surrounding properties. The site plan and the intensity of the proposed development contribute to this problematic public safety condition.
30. **ISSUES REGARDING ENVIRONMENTAL REPORT:** During the public hearing process, the applicant submitted a copy of a document which looked like a lab report. If it is authentic, this document shows tests on soils which seem to come from the subject location and it appears that the property may have been tested to see if it had PCBs. The source of this document is unknown, but the applicant relied upon it, so the Commission must infer that at some point, the power company was concerned enough about PCBs at this location to have such a test run, and this means that the equipment there did have PCBs inside their transformers. Therefore, the Commission has a genuine basis to be concerned about PCBs or a spill or leakage of PCBs into the soil. The Commission needs to know if these PCB’s were contained or cleaned up properly.

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At the July 8, 2008 public hearing, the applicant submitted a copy of a Phase 1 Environmental Site Assessment. This Phase 1 Study was prepared by a Senior Scientist of Northeast Utilities Service Company, and was completed prior to the utility's sale of the property. The applicant's subsequent submittal dated July 14, 2008, page 2 and pages A10-A14 refer to a May 21, 2002 lab report. Based solely upon this unauthenticated report, the applicant testified that 17 lab tests were done and all tests were less than one part per million so it is believed that the site is clean. The soil testing was believed by applicants to have been done during the demolition. As noted, the site was previously used by Northeast Utilities/CL&P as an electrical substation for many decades.

31. PHASE 2 REPORT. The Commission has concerns regarding that lab report and the testing process. The first is that it would appear that the report may have been prepared by an employee of Northeast Utilities Service Company, an affiliate of the utility, CL&P. The second is that the Commission believes that in this case, a proper, reliable and complete Phase 2 report is appropriate, and much needed to determine if the site is safe for residential development. The record shows that the site has been extensively disturbed since the equipment was removed, so this must be taken into account in resolving this deficiency in health and safety.

NOW THEREFORE BE IT RESOLVED that the application for Site Plan approval is hereby DENIED WITHOUT PREJUDICE FOR THE FOLLOWING REASONS:

- A. Inadequate sight lines due to inadequate front yard setbacks of proposed building at Leroy and West Avenue intersection creates public safety hazard and violates Section 363 of the Darien Zoning Regulations.
- B. Inadequate sight lines for driveway access.
- C. Proposed density of 16 units which is the equivalent of 34 units per acre creates public safety hazards relating to inadequate on-site parking and emergency and service vehicle access.
- D. Proposed building coverage of 58.2% substantially exceeds 20% maximum building coverage in all residential zones and 25% maximum building coverage in multi-family zones. This proposed massive structure would impose upon the light, air, and comfort of the surrounding residences.
- E. Inadequate on-site parking spaces for 16 two bedroom units. Inadequate on-site parking made worse by number of units, number of bedrooms, proposed extensive building coverage and small lot size. Inadequate on-site parking would produce public safety problem for vehicular and pedestrian traffic on Leroy and West Avenues if cars attempted to park or discharge passengers or make deliveries by parking or stopping on Leroy or West Avenues.
- F. The application was incomplete due to failing to submit testing as reflected in a formal and complete Phase 2 Environmental Report.

Based on the above stated reasons the Commission finds that the elements of the Site Plan, submitted as part of the application, DOES NOT accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

COMMISSION RECOMMENDATIONS:

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- A. The building should be modified to pull it farther away from the West Avenue and Leroy Avenue intersection, thereby improving the sight lines and improving overall traffic and pedestrian safety.
- B. There should also be a larger driveway “plaza”, which could allow for additional visitor parking, and safe access for emergency and service vehicles. The applicant should consider an area with grass pavers to allow for better emergency vehicle access, particularly along an enlarged setback area along Leroy Avenue, north of and adjacent to the driveway plaza and building entrance area.
- C. There should be additional room around all sides of the building to give the Fire Department more appropriate and improved room to operate. The Commission strongly recommends that any revised plan include an emergency generator for power to operate emergency lighting, ventilation, and the elevator in case of emergency and/or power outage. Pressure testing data should be included to ascertain that any proposed sprinkler system would work properly.
- D. In any re-application, the proposed building should not be increased in height, and the density and building coverage should be reduced/decreased.
- E. The applicant submitted a Phase 1 Environmental Site Assessment. The Commission notes that the CL&P electrical transformers were on-site for many years. The applicant submitted what appeared to be a lab report. There is a need to know where that document came from, and get authentication for it. Proper testing as reflected in a formal and complete Phase 2 report is hereby required by this Commission prior to any re-submittal. This will allow the Commission to determine and understand any potential contaminants on-site, and ensure if there was a spill or leakage, that it was properly remediated, and the site is safe and available to be developed for residential use.
- F. The applicant should submit a report confirming whether any wetland soils are present on the site, particularly under the area that was recently regraded with trap rock and fill.
- G. That measures be taken to improve downstream impact of stormwater in a 2 and 100 year storm.
- H. The Commission recommends that as part of any re-application, that a sidewalk be proposed for both the West Avenue frontage as well as the Leroy Avenue frontage. There should be shown on the plans necessary carbon monoxide venting of the garage, at all times, including power outage events. Because of the high traffic flows and heavy pedestrian use of both Leroy and West Avenues in the vicinity of the proposed site, and also the increased pedestrian flow through the intersection generated by people walking to and from the proposed building, the applicants should be responsible for obtaining pedestrian safety improvements installed at the Leroy – West Avenue intersection, including four cross-walks, suitably marked and bi-directional “walk – wait” pedestrian signals adjacent to each cross-walk.

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- I. When redesigning the project and revising the associated zoning regulations for a subsequent submittal to the Commission, the applicant should also allow for additional room in the side and rear yard setbacks to allow for improved emergency access in those two areas.
- J. The applicants should indicate to what extent they have experience in building multi-family residences and demonstrate to what extent they have the ability, resources, and commitment to carrying out a project that will achieve the statutory objectives of Section 8-30g.
- K. The applicants need to address the specific terms of the affordable units management plan as part of a complete application.

***II. Amendment to the Zoning Map/Amendment to the Zoning Regulations***

1. The applicant proposes to amend the Darien Zoning Regulations by establishing a new overlay zoning district, creating new zoning regulations associated with that new overlay district, and rezoning the subject properties with the new overlay district.
2. The Commission finds that, due to health and safety factors, the site is not adequate in size or capacity for the proposed development of the density and design as submitted, and, therefore, the requested rezoning is denied. Specifically, the Commission finds the following factors as decisive in denying the requested amendment:
  - inadequate front yard setback;
  - no maximum building coverage;
  - footnote regarding Sections 363 and 221, which would waive these regulations;
  - Inadequate parking requirements;
  - Inappropriate unit density.
3. Building Line, Front Setback. There are several aspects of this zoning regulation amendment which are of concern. Because the subject property is a corner lot, it has two front yards—one on West Avenue and the other on Leroy Avenue. The first major concern is the proposed **building line, front setback** of five feet. This proposal would allow any proposed building to be close to both streets. In this specific case, the building is proposed to be very close to the intersection of West Avenue and Leroy Avenue, resulting in sight line issues. Any new zone created for this property should provide some front yard setback requirement comparable to the 25 foot setback allowed in the R-1/5 Zone or the 30 foot front setback in multi-family zones, and should provide for the safety of the residents of the building as well as maintain and enhance the character of the streetscape. A building close to the road(s) can create sight line and other safety issues. Both **side and rear yard setbacks** also need to be specifically considered to allow room for placement of escape ladders to access the windows on these sides of the proposed building. There needs to be space around the perimeter of the building to handle emergency vehicles, some of which may need sufficient additional space beyond the vehicle's width to accommodate outrigger stabilizers on both sides of the equipment. Related to this concern is the fact that the building is three full stories high, and eight feet higher than currently allowed in the Zoning

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Regulations. This building, which would be taller than most buildings which now exist in residential zones as well as other existing multi-family and affordable developments in Darien, would also be much closer to the road than normal, resulting in an imposing “looming” effect, which would not only crowd the road, but compromise safety via the sight line issues, and also due to there being a greater danger from vehicular incursion over the curb line and into the building itself.

4. **Sight line footnote.** On page 2 of the applicant’s July 14, 2008 submittal, the applicant notes that “...the proposed overlay zone regulations for the subject property, “Leroy-West Affordable Housing Overlay Zone,” is to be amended to indicate that the Section 363 “Visibility at Intersections” and the corresponding depiction in Section 221 is not applicable.” If this note within the overlay zone were to be implemented, especially in conjunction with the very limited front yard setbacks proposed, sight line safety concerns at intersections would be the certain result. The Commission is not willing to approve this footnote due to safety concerns.
5. **Building coverage.** The proposed overlay zone has no maximum building coverage. Currently, the R-1/5 Zoning District (and all of the other residential zoning districts in Town) has a 20% building coverage maximum allowed. Existing multi-family and affordable housing developments have a maximum building coverage of 25%. (Section 504 (11) of the Zoning Regulations) The proposed overlay zone would not have any restrictions on building coverage. This limitation is needed to assure that there is sufficient room on the property for necessary ancillary uses such as on site parking, maneuvering room for emergency and service vehicles; utilities and mechanical equipment; recycling and garbage bins and dumpsters; and yards. When re-zoning this or any site, the Commission must consider some type of similar limitation so that the ancillary uses can fit on the site in a safe and workable manner.
6. **Density.** With the 34.0 two-bedroom units per acre density proposed, some responsible limitation on maximum building coverage should be considered when re-zoning this one parcel via an overlay zone designation.
7. Based on the above findings, the Commission hereby denies the Zone Change request of the applicants for the proposed change of zone to accommodate up to 16 housing units on the  $\pm 0.477$  acre property located on the northwest corner formed by the intersection of the West Avenue and Leroy Avenue.

NOW THEREFORE BE IT RESOLVED that the applications for ***Proposed Amendments of the Darien Zoning Regulations and Map*** are hereby DENIED WITHOUT PREJUDICE

**III. NEXT STEPS:**

1. Overall, the Commission is receptive to the general concept of affordable housing at this location. It is fairly well-suited for such a development, and is a site in close proximity on Leroy Avenue to another affordable housing project (Clock Hill Homes), a multi-family development (Middlesex Commons) and a site recently purchased by the Town of Darien and currently being considered for affordable housing. It is also served by public water and

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sewer and other major utilities; is located on two main roads, is within easy walking distance to downtown, including services and retail uses; and it is proximate to the Darien Train Station, and a bus line. These features are all positive. However, the Commission must look at the specific site plan and regulations proposed as part of this application. The actual building design has resulted in a building that is very close to the property lines, which has a negative effect on public safety due to aforementioned sight line and other safety space limitation issues. The intensity/density/number of units proposed results in serious parking issues and potential traffic safety conflicts. The proposed intensity of development is a serious problem which needs adjustment. As currently proposed, this would not be safe for the community or the proposed occupants.

2. The Commission has considered the proposed site plan and the evidence in the record compiled before the Commission and finds that its decision to deny the present application without prejudice is necessary to protect substantial public interests in health, safety, or other matters which the Commission may legally consider, that such public interests clearly outweigh the need for these five proposed affordable housing units and that such public interests cannot be protected by the Commission making reasonable changes to the proposed affordable housing development.
3. The record also demonstrates that the Commission supports more affordable housing for the town. The Commission has previously amended the Regulations to accommodate and encourage moderately priced and/or affordable housing. Reasonable increases in density, lessening setback requirements, increasing allowable building coverage and other incentives have already been incorporated into the regulations concerning the DBR, DMR and other zones. The Town of Darien has sponsored and subsidized affordable housing developments known as the Old Town Hall elderly housing complex, Clock Hill Homes, and the Allen-O'Neill housing project. These other existing Darien affordable housing developments demonstrate that affordable housing and public health and safety are not mutually exclusive.
4. The Commission recognizes that under Connecticut General Statute Section 8-30g(c)(1)(D), it has the ability to either modify the application or to indicate what modification would be necessary to obtain an approval that satisfies the many applicable factors set forth in this resolution. Many of the Commission's concerns are based upon substantial and significant safety and health factors including: the need for safe access, ingress, and egress; proper and safe access for emergency vehicles, equipment and personnel; and most importantly, sight lines. There is also an issue of PCB presence and any necessary cleanup to ensure that the site is appropriate for residential development. These are issues that cannot be "modified" by the Commission, but rather, will require a re-application by the applicant with further details (and possibly testing and reporting) to ensure that the subject lots are safe to be developed and do not compromise public safety.
5. The Commission does not believe that it has an obligation to design this multi-family residential project or to speculate as to what lesser density would be feasible based upon the information provided by the applicant. It is much more than moving the proposed building. Comments contained herein will allow the applicant to redesign the project to meet the stated safety concerns. Applicant also needs to demonstrate that it has the commitment,

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ability and resources to carry out the project in a manner that fulfills the objectives of Section 8-30g, under which this application was filed.

6. The Commission notes the applicant's option to submit the necessary site-specific information detailed above by way of a proposed modification of the proposal/application as is permitted by Conn. Gen. Stat. §8-30g(d).

Chairman Conze then read the following agenda item:

**Business Site Plan #256/Special Permit, Athos Real Estate Inc., 71 Boston Post Road.**

Minor modifications to previously approved plans.

Mr. Ginsberg explained that there are many minor modifications that had been submitted in the Zoning and Building Permit construction plans. These plans differ somewhat from the plans that the Planning & Zoning Commission had approved. He indicated that the architect was available to explain the requested modifications.

Loren Meyer of Sound Architecture presented the plans, and explained that the overall length of the building, including the trash enclosure area, would not change, but the area that is enclosed on the first and second floor would expand by 1'11" to the west, into the trash enclosure area. This adds additional square footage to the basement, first and second floor. He explained other changes that had been incorporated into the plans that include: a revised staircase and landing in the northeast corner of the building, changing from 12" thick blocks to 8" thick blocks to gain additional interior square footage; installation of a chase for utilities and mechanical equipment (this chase would run from the basement level to the roof); and a new stairway being added in the northwest corner of the building to provide access to the basement. Mr. Meyer said that the total amount of finished floor area would not exceed 1,749.45 square feet, which would allow the project modifications without requiring any additional on-site parking.

Mr. Ginsberg asked Mr. Meyer to respond to the comments that had been submitted by the Fire Marshal. Mr. Meyer replied that the Fire Marshal had indicated his concern to make sure that the exit doorway on the west side of the building would not be obstructed by any materials or equipment within the trash enclosure area. Mr. Meyer explained that the trash would be collected in roll-out bins within the enclosed area. Later, to be collected by the truck, the bins would need to be rolled out of the area, dumped into the truck, and then rolled back into the enclosure. Mr. Spain said that some form of lip or transition might be necessary in order to keep the trash bins or other materials from being within the egress pathway required by the Fire Marshal. Mr. Meyer indicated that he would work on such a system.

Commission members had no other concerns with the request and modifications with respect to the physical structure of the building. The following motion was made: That the Commission approves the request and modifications of the building with the understanding that all stipulations of the original approval would still be applicable. The motion was made by Mr. Finke, seconded by Mr. Spain and unanimously approved.

Chairman Conze then read the following agenda item:

**Business Site Plan #171-C, 1063 Boston Post Road, CBD Zone.**

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Amendment of site plan to install an awning on the side of the building.

Mr. Ginsberg explained that Dwight Collins was present to request that the Planning & Zoning Commission allow the installation of an awning within the pedestrian walkway on the west side of the building. The awning would give a more pronounced visibility to the entrance way to the second floor office use. The Architectural Review Board had approved the design of the awning, but the awning was not shown on any plans previously approved by the Planning & Zoning Commission and would therefore be subject to the Commission's decision with the respect to the modification of the site plan. After a brief discussion, the following motion was made: That the Commission approve the requested modification to install an awning adjacent to the entrance to the second floor office space. The motion was made by Mrs. Grimes, seconded by Mr. Finke and unanimously approved.

Mr. Conze then read the following agenda item:

**Amendment of Business Site Plan #249-A/Special Permit, Land Filling & Regrading  
Application #173-A, Whole Foods Market, 150-152 Ledge Road and  
Amendment of Business Site Plan #194-D, BMW of Darien, 138-140 Ledge Road.**

Proposal to modify previously approved plans relative to grading and landscaping.

(Plans to be presented at the meeting)

Mr. Ginsberg distributed the October 28, 2008 letter and attached plans from Attorney Wilder Gleason who represents Whole Foods Market. The letter explains that in the process of obtaining approval from the State of Connecticut with respect to the off-site roadway improvements, they are finalizing their construction drawings and designs. Part of the modifications required by the State and coordination with other neighboring properties is to modify the access easement that goes through the subject property and into the BMW dealership to the west. As part of this coordination, they will need to relocate the easement and modify the grades slightly to make sure that access to the BMW dealership is maintained. Attorney Gleason has not yet obtained permission from the adjacent owner of the BMW site, however, he wants to know whether the Planning & Zoning Commission would find these modifications acceptable. The Commission members discussed the requested modifications and noted that the Business Site Plan for Whole Foods will need to be modified and the Business Site Plan and Special Permit for the car dealership will also need to be modified. They had no issues or concerns with the requested changes.

The following motion was made: That the Commission approve the requested modifications with respect to the Whole Foods Market site, and authorized the Director of Planning to review the final documents and drawings to assure that the project is coordinated with the neighboring properties and to also authorize the Director of Planning to administratively authorize the amendment to the BMW Business Site Plan and Special Permit. The motion was made by Mr. Spain, seconded by Mr. Finke and unanimously approved.

Mr. Ginsberg noted that part of the work being undertaken within the State right-of-way on Boston Post Road (Route 1) will involve the removal of several large trees. Four of those trees are located on the west side of the Boston Post Road, near the entrance to the former Howard Johnson's Restaurant. The removal of these large trees will dramatically change the appearance of the



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intersection. Since the work is within the State right-of-way, the Town has no jurisdiction over this matter.

**Approval of Minutes**

*September 23, 2008 Public Hearing/General Meeting*

The following motion was made: That the Commission approve the minutes as drafted. The motion was made by Mrs. Grimes, seconded by Mr. Finke and unanimously approved.

*September 30, 2008 Public Hearing*

The following motion was made: That the Commission approve the meeting minutes that were submitted. The motion was made by Mr. Spain, seconded by Mr. Finke and unanimously approved.

*October 7, 2008 General Meeting*

The following motion was made: That the Commission approve the meeting minutes as presented. The motion was made by Mrs. Grimes, seconded by Mr. Finke and unanimously approved.

**Review of upcoming meeting schedule.**

Mr. Ginsberg indicated that there will be no meeting conducted on next Tuesday, November 4<sup>th</sup>, because it is Election Day. A Special Meeting will be conducted on Thursday, November 6<sup>th</sup> to continue the public hearing regarding Oak Crest application. Other minor business items might be placed on that agenda. Tuesday, November 11<sup>th</sup> was originally scheduled for a meeting date, but it is Veterans' Day and therefore the meeting will be cancelled. Another Special Meeting might be necessary in November or December to have a public hearing regarding the Allen O'Neill application. That Special Meeting might be on November 18<sup>th</sup> or November 25<sup>th</sup>.

Chairman Conze then read the final agenda item:

**Distribution of final Stormwater Management Report and discussion of next step(s).**

Mr. Ginsberg distributed copies to the Commission members of the Stormwater Management Report and Draft Regulations prepared by Tighe & Bond. He said the Commission will next need to incorporate the recommendations into the Zoning Regulations. The Draft Regulations will be prepared by staff, and a public hearing will be scheduled for early 2009. He noted that the work of Tighe & Bond who prepared this report will continue to be coordinated with any upcoming report by Milone & MacBroom who is performing the Town-wide drainage study on behalf of the Town. Mr. Spain said that it would be appropriate to have a system to easily evaluate the potential impacts of a project on the rest of the drainage system. Mr. Ginsberg said that they will continue to work with all parties to coordinate the efforts in this matter.

There being no further business, the meeting was adjourned at 8:55 P.M.

Respectfully submitted,

David J. Keating  
Assistant Director of Planning